

***Who Owns the Past? Cultural Policy, Cultural Property and the Law.* Kate Fitz Gibbon, ed.
New Brunswick, NJ: Rutgers University Press, 2005. 335 pp. (Co-published with the
American Council for Cultural Policy.)¹**

Reviewed by Christina Kreps

Who Owns the Past? Cultural Policy, Cultural Property and the Law has an ambitious and worthy goal, that is, “to explain the ethical, legal, and practical arguments on which current U.S. policy is based, and to make the cultural property debate comprehensible to all” (p. xiii). The book consists of 29 articles and essays organized under four main headings: I, The Laws; II, Collecting and the Trade; III, Art in Peril; IV, The Universal Museum. Section V, includes Appendices and Links. Some of the articles are updated versions of previously published pieces, while others were commissioned for the volume. Among the topics covered are: the history and development of cultural property law and policy; rights to cultural property and the ethics of collecting; threats to arts and antiquities due to illegal trafficking, looting, as well as war and development; repatriation; roles and responsibilities of museums; and international cooperation for the protection of cultural property. The editor, Kate Fitz Gibbon, provides an abstract of each article in the “Introduction” and an overview of international and national cultural property legislation in the first chapter titled “Chronology of Cultural Property Legislation.” She also is the author of four other essays in the book.

Written in accessible, non-technical language, Fitz Gibbon’s chapter and other essays in the first section on “The Law” are useful references for newcomers to the field seeking to

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<http://museumanthropology.wordpress.com/2007/07/07/mar-2007-2-2/>. © Christina Kreps 2007. MUA MS2007-36 / MAR2007.2.2

understand the complexities of legislation regulating the transfer and ownership of cultural property. Authors examine the “development of US and foreign cultural property law, as well as recent U.S. case law that affects the ability of both private collectors and U.S. museums to own artworks from other countries and other times” (p. xiii).

While highly informative in parts and useful on a number of levels, the volume is uneven in terms of writing styles and scholarly integrity. This is unfortunate since the book was published by an academic press, but perhaps understandable given the diverse backgrounds, perspectives, and interests of its contributors. In addition to art historians, anthropologists, archaeologists, and museum professionals, the book also includes contributions from journalists, art collectors, dealers, and legal experts. In short, it represents those with scholarly/scientific interests in the traffic, ownership, and protection of cultural property as well as those with commercial ones. Here it is also important to note that the book was sponsored by and published in association with the now defunct American Council for Cultural Policy. As Ashton Hawkins, former President of the organization and counsel to the Metropolitan Museum of Art states in the Preface, “the American Council for Cultural Policy was founded in 2002 as a not-for-profit organization dedicated to informing the public on arts issues. Our membership includes scholars, museum professionals, collectors, and those who advise them” (p. ix).[1] The volume’s editor, Kate Fitz Gibbon, is a specialist on Central Asian art and world heritage issues who also served on the Cultural Property Advisory Committee to the United States President from 2000 to 2003.

Although the book presents a wide range of views from diverse constituencies, it is clearly weighted on the side of those who would like to see a loosening of national and international laws on the trade and ownership of cultural property. According to Fitz Gibbon, “legal mechanisms currently in place to protect cultural heritage are not working well” and “the

debate is over not only who owns the past, but in whose hands the stewardship of cultural heritage should lie” (p. xiv).

Hawkins and Fitz Gibbon set the tone of the volume in the “Preface” and “Introduction.” While they call for a more open and balanced discussion of the issues they also let readers know where they stand. Both authors are concerned that legal, practical, and factual arguments in debates on the ownership and circulation of cultural property have been overshadowed by moral arguments largely promulgated by certain members of the scientific community and their supporters. In Fitz Gibbon’s words,

there is a widely accepted view—voiced often by archaeological interests...that issues of cultural heritage are simple moral arguments between opposing scientific and commercial interests. Archaeological organizations have urged changes to US law that would significantly reduce the trade in art, and make it more difficult for museums to preserve access to materials from the world’s diverse cultures. [p. xiii]

Hawkins asserts that at stake is nothing less than the protection of the “fundamental values of Western culture and our democratic political process” (p. ix).

In keeping with this rather defensive and alarmist tone is Steven Vincent’s essay “Indian Givers,” which can be seen largely as a diatribe on the Native American Graves Protection and Repatriation Act (NAGPRA). Vincent was a freelance journalist who wrote on arts issues and cultural policy.[2] The author opines on the “political correctness” and “Orwellian” implications of NAGPRA in the following passage.

How did a well-intentioned piece of legislation take on such Orwellian overtones? The answer is complicated, a result in part of the weighted history of Indian relations in this nation, a vaguely written federal law, and zealous government agencies that seek to

enforce it—as well as the confusing, subjective, and often contradictory nature of Native American culture itself. But mostly, NAGPRA is an object lesson in what happens when the American political and legal establishments delve into race and race consciousness, blurring the time line between myth and science, the sacred and profane, while affirming the values that are in many ways antithetical to the basis of Western culture. [p. 35]

To Vincent, NAGPRA presents a serious threat to such “core Western values” as the scientific method, constitutional liberty, and the right to own private property (p. 43).

Both Native and non-Natives who have worked on NAGPRA matters will admit to the complexities of the law and the challenges that can arise in its implementation. Nevertheless, I think many would say that NAGPRA has done more to bring scientific, museum, and Native American communities together than to divide them, opening doors to mutually beneficial, collaborative relationships.

Vincent is particularly concerned with how NAGPRA has encumbered the ability of private collectors and dealers to engage in the free trade of Native American art and artifacts. He blames restrictions on trade to the “cowboy mentality” of government agents and their “dismissive attitudes” toward these constituencies. He attempts to buttress his position by using anecdotal evidence in the form of extensive quotes from dealers and collectors, as well as archaeologists and physical anthropologists critical of NAGPRA. Few of the quotes are referenced and only one of his sources is cited (Karen Warren’s “Introduction” in *The Ethics of Collecting Cultural Property*, Phyllis Mauch Messenger, ed. University of New Mexico Press, 1989). Needless to say, Vincent’s essay presents a highly biased view of NAGPRA and its consequences. This stance may be anticipated given the essay’s rather offensive title.

It would be wrong, however, to characterize the entire volume as one-sided and vitriolic in tone. There are a number of well-reasoned, thoughtful articles backed up by sound scholarship and written by authors with distinguished careers. Such is the case with Clemency Chase Coggins' article "Archeology and the Art Market," which originally appeared in the journal *Science* in 1972. In this seminal work, Coggins discusses the destructive consequences of the looting of archaeological sites in South and Central America, and the need to stop the collecting of looted, unprovenanced objects by private collectors and museums.

David Matsuda puts a more current spin on looting in his article "Subsistence Diggers," which is based on his research among subsistence farmers in Belize, El Salvador, Guatemala, Honduras, and southern Mexico.[3] The article addresses the socioeconomic and political causes behind the "underground artifact economy" in the region, and suggests that the problem to site despoliation is best served by looking at its root causes.

Small landholders, landless tenant farmers, seasonal plantation workers, underpaid wage and contract laborers, and refugees become diggers because they have no other way to survive. Subsistence digging is not the cause of social ills. Rather, it is the result of basic human rights denied. [p. 256]

Also instructive is Emmy C. Bunker's article "The Acquisition and Ownership of Antiquities in Today's Age of Transition." Bunker, who is an art historian and specialist on western Chinese, Southeast and Central Asian art, offers examples of how Western collectors, arts institutions, and scholars can collaborate with museum professionals and administrators in source countries on cultural restitution efforts. She describes how materials, held in private collections and Western institutions, have been repatriated to museums, specifically, in Cambodia and China. Bunker additionally provides an account of how projects, sponsored by

private collectors and foundations, to recover lost objects and safeguard current collections at the National Museum of Cambodia are contributing to that country's effort to preserve its cultural heritage. These initiatives serve as models of cooperation among Western collectors and institutions and source country administrations. Bunker reminds us that "collectors and dealers are responsible for much that is good in the art world. They have funded research, archaeological digs, publications, and other work important to scholarship" (p. 315) and that many of the world's great museums would be without their collections if it were not for the donations from private collectors (see also the essay in this volume by Shelby White, "Building American Museums: The Role of the Private Collector"). Equally constructive are Bunker's suggestions on possible solutions to the problem of the illicit traffic and trade in antiquities. The author contends that her essay is not an apology for collecting, but rather, a plea for rational discussion and understanding among the various stakeholders. In defense of collectors, Bunker stresses how "collectors, both public and private, are custodians of other people's culture and have an obligation to share the fruits of that culture with the world" (p. 317).

Notwithstanding its scholarly shortcomings, overall, I find *Who Owns the Past?* a highly informative and important text precisely because of its provocative nature. It represents the views and interests of constituencies often ignored by academic and museum anthropologists despite the influential role they play in the "traffic of art and culture" as well as policy making. Indeed, one of the purposes of the book is to provide a forum for the expression of "views that have not been widely disseminated or discussed" (p. ix). The provocative tenor of many essays in the book makes them useful for classroom discussion. But perhaps more importantly, the book reveals how impassioned and acrimonious the debate on the trade, ownership, and protection of cultural property can be, and the roles various constituencies play in the debate. In this respect,

the book can be a “wake up call” to museum and academic anthropologists whose voices have tended to be largely silent in the debates on national and international cultural policy.[4]

Presently, the question of who owns the past is open-ended. But academic and museum anthropologists should not sit idly by and let those who possess the most power and resources ultimately determine the answer to this question. Current national and international legislation and policy was enacted to redress wrongs of the past and counter-balance the dominance of certain world powers and commercial interests. Indeed, much is at stake. As the book suggests, we need to keep the debate going and dialogue open to find workable solutions that include multiple voices, perspectives, and interests.

Notes

1. According to David Nelson Gimbel, founder and director of the non-profit research and advocacy group Archaeos, the American Council for Cultural Policy was “little more than a lobbying group for the antiquities trade.” The Council was comprised of “the very same people who at the outbreak of the Iraq Crisis labeled the Iraqi antiquities laws as ‘retentionist,’ and who engaged in lobbying the US government to relax legislation regarding the import and sale of antiquities.” <https://listhost.uchicago.edu/pipermail/iraqcrisis/2005-April/001202.html> (accessed July 6, 2007).
2. As noted on the copyright page of the volume, Steven Vincent was tragically kidnapped and killed in Basra, Iraq on the day the book went to press.
3. David Matsuda is a lecturer in anthropology and human development at California State University, Hayward. He received the Minoru Yasui human rights award for his work with indigenous peoples.

4. See Richard Kurin (2003) “UNESCO Votes New Intangible Cultural Heritage Convention.” *Anthropology News*. 44(9):21-22 and Paul Niri (2005) “UNESCO and Cultural Diversity” *Anthropology News* 46(9):25.

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